IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1819 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BABABHAI J RABARI

Appearance:

1. Special Civil Application No. 1819 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

MR PRABHAKAR UPADYAY for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/09/2002

ORAL JUDGEMENT

What is challenged in this petition under Articles 226 and 227 of the Constitution is the judgment and award dated 3.1.2001 of the Industrial Tribunal, Ahmedabad in reference (IT) No. 244 of 1995 setting aside the penalty imposed by the petitioner-Corporation on the

respondent-driver.

2. While the respondent was driving the petitioner-Corporation's bus on 31.8.1988, the bus met with an accident with a rickshaw. Two rickshaw passengers died in the accident. The petitioner Corporation held a departmental inquiry against the respondent and on finding that the bus was driven negligently, imposed penalty of stoppage of four increments with future effect. The respondent raised an industrial dispute which came to be referred to the Industrial Tribunal. On the ground that the respondent was acquitted in the criminal case and that the Corporation had not examined any eye witness at the departmental inquiry and the Corporation had merely relied on the report of the reporter who was not himself an eye witness and had merely relied on the statements recorded before the police and the panchnama, the Tribunal held that no evidence was led to prove the negligence of the respondent-driver and, therefore, the findings of the disciplinary authority were not borne out by the material on record.

3. At the hearing of the petition, Mr Hardik Raval, learned counsel for the petitioner-Corporation has submitted that even though the respondent was acquitted by the Criminal Court, the respondent was held to be guilty of negligent driving by the Motor Accident Claims Tribunal and the Motor Accident Claims Tribunal awarded compensation with interest and costs which in the aggregate worked out to more than Rs.5 lacs. It is, therefore, submitted that if the petitioner Corporation were to adopt any judicial finding, the petitioner would be justified in adopting the finding given by the Motor Accident Claims Tribunal as the standard of proof would be the same both in the departmental inquiry and in the motor accident claim proceedings i.e. preponderance of probabilities as against the standard of proof beyond reasonable doubt in a criminal trial.

4. On the other hand, Mr Upadhyay, learned counsel for the respondent submits that when the petitioner-Corporation had not examined any eye witness at the departmental inquiry and the reporter himself was also not an eye witness, the Corporation was not justified in holding the respondent to be guilty of negligent driving and the Tribunal had rightly held that the misconduct alleged against the respondent was not proved. Reliance is placed on the decision dated 20.3.2002 of this Court in Special Civil Application No. 6379 of 2001.

It is also submitted in the alternative that assuming that the charge of negligent driving was held to have been proved, there were mitigating circumstances and also the fact that the rickshaw was overloaded with passengers and milk canes would indicate that the rickshaw driver was also guilty of composite negligence.

Mr Upadhyay has further submitted that penalty of stoppage of four increments with future effect is too harsh and disproportionate as the same would have recurring effect althroughout the service career and even on the retiral benefits.

5. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submissions of Mr Raval for the petitioner-Corporation. In respect of the same incident involving the accident between the Corporation bus and the rickshaw, three proceedings have taken place. In the criminal trial, the standard of proof is beyond reasonable doubt. In the motor accident claims proceedings, the standard of proof is preponderance of probabilities. The respective judicial fora have examined the evidence before them and arrived at the finding by applying the standard of proof applicable in the relevant proceedings. It, therefore, appears to the Court that merely because the Criminal Court has acquitted the respondent driver by applying the yardstick of proof beyond reasonable doubt, that itself cannot be a circumstance for holding that the respondent was not guilty of negligent driving. On the contrary, the fact that the Motor Accident Claims Tribunal held the driver to have been responsible for causing the accident in question would be a more relevant consideration for adopting the finding of the Motor Accident Claims Tribunal when the standard of proof in the departmental inquiry as well as in the motor accident claim petition is the same i.e. preponderance of probabilities. In the facts in Special Civil Application No. 6379 of 2001 decided on 29.3.2002, there is no reference to any finding of the Motor Accident Claims Tribunal. Hence, the principles laid down in the said decision cannot clinch the issue in favour of the respondent-driver in the facts of the present case.

6. Hence, while the finding that the respondent-driver was responsible for causing the accident in question ought not to have been disturbed by the Industrial Tribunal, at the same time considering the fact that the rickshaw in question was overloaded with

passengers and milk canes, the said fact was required to be taken into consideration while imposing penalty on the respondent-driver.

Hence, taking an over all view of the matter, it appears to the Court that the interests of justice would be served if, while setting aside the award of the Industrial Tribunal, and holding that the charge of negligent driving levelled against the respondent-driver was proved, the penalty of stoppage of four increments with future effect imposed by the Corporation is substituted by the stoppage of three increments with future effect.

7. The petition is allowed. The impugned judgment and award dated 3.1.2001 passed by the Industrial Tribunal, Ahmedabad in reference (IT) No. 244 of 1995 is quashed and set set aside. However, the penalty imposed by the Corporation on the respondent-driver is modified to that of stoppage of three increments with future effect.

Rule is made absolute the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
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